?BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

%DATED: 01.11.2018

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THE HONOURABLE MR.JUSTICE G.K.ILANTHIRAIYAN
+Crl.O.P.(MD).No.19585 of 2018
and
Crl.M.P.(MD).No.8914 of 2018

#Raja @ Gold Raja : Petitioner

Vs.

$The Sub~Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.
(Crime No.550/200) : Respondent

PRAYER : Criminal Original Petition is filed under Sections 482 of Cr.P.C. to set aside the order passed by the learned Judicial Magistrate No.I, Padmanabhapuram in C.M.P.No.3883 of 2018 in C.C.No.28 of 2010 dated 07.09.2018.

!For Petitioner : Mr.K.P.Narayanakumar
^For Respondent : Mr.K.Suyambulinga Bharathi
Government Advocate (Crl. Side)

:ORDER

The Criminal Original Petition has been filed seeking to set aside the order passed by the learned Judicial Magistrate No.I, Padmanabhapuram in C.M.P.No.3883 of 2018 in C.C.No.28 of 2010 dated 07.09.2018.

2. The learned counsel for the petitioner would submit that the petitioner is a sole accused and the respondent police filed charge sheet against the petitioner for the offences punishable under Sections 279, 337 IPC r/w 134 of MV Act and have taken cognizance in C.C.No.28 of 2010 by the learned Judicial Magistrate No.I, Padmanabhapuram. P.Ws.1 to 6 examined as prosecution witnesses. But due to personal inconvenience, P.Ws.1 to 6 were not cross~examined by the petitioner. Therefore, he filed the petition to recall P.Ws.1 to 6 for cross~examine. Without considering the facts and circumstances of the case, the learned Judicial Magistrate dismissed the same.

3. The learned Government Advocate (Crl. Side) would submit that the prosecution examined P.Ws.1 and 2 on 21.05.2015 and examined P.Ws.3 and 4 on 16.06.2017. On 17.07.2018, P.Ws.5 and 6 were examined as prosecution

witnesses and the case has been posted for further witnesses of the prosecution. On the stage only, to drag on the proceedings, the petitioner filed the petition under Section 311 of the Code of Criminal Procedure. Therefore, the learned Magistrate rightly dismissed the petition and this Court cannot interfere with the said order. Therefore, he prayed for dismissal.

4. Heard the learned counsel on either side.

5. It is seen from the records that P.Ws.1 to 4 have been examined by the prosecution and finally P.Ws.5 and 6 were examined on 17.07.2018. Admittedly, the petitioner did not cross~examine any of the witnesses. The charge is for the offences punishable under Sections 279, 337 IPC r/w 134 of MV Act. Therefore, the main witnesses to be cross~examined by the petitioner.

6. Considering the facts and circumstances of the case, the order passed in C.M.P.No.3883 of 2018 in C.C.No.28 of 2010, dated 07.09.2018, by the learned Judicial Magistrate No.I, Padmanabhapuram, is set aside and the Criminal Original Petition is allowed. Considering the year of the case, the learned Judicial Magistrate No.I, Padmanabhapuram is directed to complete the trial within a period of six months from the date of receipt of copy of this order. Consequently, connected miscellaneous petition is closed.

To

1.The Judicial Magistrate No.I, Padmanabhapuram.

2.The Sub~Inspector of Police,
Thuckalay Police Station,
Kanyakumari District.

3.The Additional Public Prosecutor,
Madurai Bench of Madras High Court,
Madurai.